

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

KAWASAKI MOTORS CORP.,)	
)	Case No. 97R-119
)	
Appellant,)	
)	
vs.)	FINDINGS AND ORDERS
)	
)	
LANCASTER COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Filed November 13, 1998

Appearances:

For the Appellant:	Edward E. Embree II, Esq. Attorney at Law 12351 West 96 th Terrace, Suite 101 Lenexa, KS 66215
For the Appellee:	Michael E. Thew Chief Deputy Lancaster County Attorney 2 nd Floor, Old Federal Bldg. 129 North 10 th Street Lincoln, NE 68508

Before: Commissioners Edwards, Hans and Reynolds

Edwards, Commissioner, for the Commission:

SUMMARY OF DECISION

The Commission affirms the decision of the Lancaster County Board of Equalization which denied Taxpayer's protest, and denies Taxpayer's request for a reduction in assessed value of the subject property.

NATURE OF THE CASE

Kawasaki Motor Corporation owns certain real property located in the City of Lincoln, Lancaster County, Nebraska. Taxpayer filed a protest with the Lancaster County Board of Equalization alleging that "Market value supports a value below County's value." By way of relief, Taxpayer requested that the proposed 1997 valuation of \$14,283,455 be reduced to \$8,650,000. County denied the protest, from which decision Taxpayers appeals.

EVIDENCE BEFORE THE COMMISSION

Judicial notice was taken, without objection, of the pleadings in Case File 97R-119; the *Marshall Commercial Valuation Service*; the *Marshall Valuation Service* (Historical information); the *Nebraska Assessor's Reference Manuals*, Volumes 1 and 2; the *Nebraska Agricultural and Horticultural Land Valuation Manual*; the Nebraska Constitution; the Nebraska State Statutes; LB1104; *Title 442, Nebraska Administrative Code* (Tax Equalization and Review Commission's Rules and Regulations); three standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition* (1996); *Property Appraisal and Assessment Administration* (1990); and *Glossary for Property Appraisal and Assessment* (1997); the Property Tax Division of the Department of Revenue's 1997 ratios and measures of central tendency which are published pursuant to Neb. Rev. Stat. §77-1327(6); the 1997 County Profiles for Lancaster County; the 1997 Equalization Proceedings of the Tax Equalization and Review Commission; the *Uniform Standards of Professional Appraisal Practice*, 1997 Edition; *Title 298, Nebraska Administrative Code* (the Nebraska Real Estate Appraiser Board's Rules and Regulations); the Nebraska Real Estate

Appraiser Board Certification Requirements; and the Nebraska Real Estate Appraiser Board Education Core Curriculum. Exhibits One through Four were received without objection. County offered Exhibit Five which consists of "OASIS" printouts (which are the Assessor's Property Record Cards) for five comparable properties used to support the land valuation in County's appraisal. Exhibit Five was received without objection.

DEFINITIONS

The issues presented require a common understanding of certain terms which have a unique definition in mass appraisal practices. Definitions of those terms are therefore set forth below:

"Excess land" is defined as that land which is not necessary to support the improvements which are on the property. The land which is necessary to support the improvements which are present on the property is termed "site support" or "minimum site" land. *Property Assessment Valuation*, 2nd Ed., 1996, (*"Property Assessment"*), p. 74. Site support land by definition includes those utilities necessary to support the improvements.

I. FINDINGS OF FACT

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016 (3) (1997 Supp.). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized

knowledge. Neb. Rev. Stat. §77-5016 (5) (1997 Supp.). From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

A.
PROCEDURAL FINDINGS

1. That Kawasaki Motors Corporation ("Taxpayer") owns certain property located in the City of Lincoln, Lancaster County, Nebraska.
2. That the Lancaster County Assessor ("Assessor") proposed valuing the subject property in the amount of \$14,283,455 as of January 1, 1997 ("assessment date").
3. That Taxpayer timely filed a protest with the Lancaster County Board of Equalization ("County") requesting that the County determine the assessed value be to \$8,650,000 as of the assessment date.
4. That the County denied the protest.
5. That Taxpayer timely filed an appeal of that decision to the Tax Equalization and Review Commission ("Commission").

B.
**FINDINGS AND CONCLUSIONS DERIVED
FROM THOSE FINDINGS**

1. That Taxpayer is the owner of certain Industrial real property which consists of 101.73 acres of land, and certain improvements thereto. (E3:20).
2. That the subject property is legally described on the Property Record Card as Lots 21 & 23 SW, and Lots 3 & 18 SW, all in Section 33, Township 11 North, Range 6 East, in

Lancaster County, Nebraska. (E3:17).

3. That "according to the records of the Lancaster County Register of Deed's Office, Lots 3, 18, 21 and 23 of the subject property are owned by Kawasaki *Motors* Corporation and the remainder is owned by Kawasaki *Manufacturing* Corporation." (E4:6).
4. That Kawasaki *Motors* Corporation does not own Lot 22. (E4:6). That a large portion of the most easterly Kawasaki building (the "Bonding" building) is on Lot 22, which is owned by Kawasaki *Manufacturing* Company. (E4:81).
5. That there is a disparity in the lot lines as shown on the map utilized by County's own expert, and the legal description of the property contained in the Assessor's Property Record Card. (E4:81; E3:17).
6. That Taxpayer's Appraiser lists the Land Area of the subject property as 101.73 acres, more or less, while the County's Appraiser lists the Land Area of the subject property as 227.73 acres. (E2:51; E3:20).
7. That land value is a critical component under the Cost Approach methodology. That land value is also an important component under the Sales Comparison Approach since it is an integral part of the land to building ratio.
8. That the difference in land value as determined by the Parties is partly attributable to the difference in area: specifically the 126 additional "expansion" acres included in the County Appraiser's calculations that are not included in Taxpayer's Appraiser's calculations.
9. That the information regarding the area of land of the subject property which is shown on the Property Record Card for the subject property (E3:17) forms the basis of the

Taxpayer's Appraiser's opinion of value as to the land component of the subject property.

10. That the Property Record Card is the official record of the Assessor showing the basis for assessments. (Title 316, Nebr. Admin. Code, Reg. 40-004). That the taxpayer, the public, and this Commission relies on the information contained in that record. That the Property Record Card for the subject property only identifies 101.73 acres as the land component of the value of the subject property. (E3:17 - 33).
11. That the information contained in the Property Record Card is the only notice provided to the Taxpayer regarding the land and improvements thereto upon which valuations are determined for purposes of taxation.
12. That the only Property Record Card which was provided to the County during the protest process shows that the area of the land of the subject property is 101.73 acres and that the "Bonding" building value is included in the value determined by the Assessor for the subject property's improvements. (E3:17).
13. That therefore the Commission finds that the area of the land which forms the basis of this appeal is 101.73 acres, and that the entire value of the "Bonding Building" is included in this appeal.
14. That the County's Appraiser determined the land value for the subject property as follows: 47.80 "site support" acres at \$15,000 per acre = \$717,000; 53.93 acres as "excess land" at \$2,500 per acre = \$134,825 for a total acre count of 101.73 acres and a total land value of \$851,825. The average per acre value for all 101.73 acres is \$8,373 per acre. (E3:20).

15. That Taxpayer's Appraiser did not consider the contribution of the excess land or the minimum site land, but determined the value of the land as one unit using \$.15 per square foot. (E3:25). That Taxpayer's Appraiser therefore determined the value of the land to be \$664,704. $(43,560 \text{ sq. ft. per acre} \times 101.73 \text{ acres} = 4,431,359 \text{ sq. ft.} \times \$0.15 \text{ per sq.ft} = \$664,704)$. The average per acre value for all 101.73 acres is \$6,534 per acre. (E2:25).
16. That County's Appraiser defined 67 acres as "support area" and 160.73 acres as "expansion" land, for a total of 227.73 acres. (E4:12). That County's Appraiser determined the value of the 67 support acres to be \$13,000 per acre, for a total of \$871,000. That County's Appraiser determined the value of the 160.73 "expansion" acres to be \$3,000 per acre, rounded to \$482,000. That County's Appraiser determined the total land value to be \$1,353,000. That the average per acre value of the land component of the subject property is \$5,944 per acre. $(\$1,353,000 \text{ divided by } 227.73 \text{ acres equals } \$5,944 \text{ per acre})$. (E4:5).
17. That there are three separate opinions of value for the land component of the assessed value of the subject property, each of which uses a different standard of measure. That in order to evaluate these opinions using the Commission's "... experience, technical competence, and specialized knowledge. . ." (Neb. Rev. Stat. §77-5016(5) (1997 Supp.)), a common standard of measure must be determined for each opinion of value.
18. That in order to compare the experts' opinions of value it is also necessary to consider the County's Appraiser's determination of land value based on only 101.73 acres of land. That the County's expert's opinion of value of the land component of the subject property averages \$9,586 per acre. $(67 \text{ acres of "site support" at } \$13,000 \text{ per acre} =$

\$871,000, plus 34.73 acres of expansion land at \$3,000 per acre = \$104,190, for a total land value of \$975,190, or \$9,586 per acre.)

19. That Taxpayer's Appraiser's opinion of value of \$664,704, or \$6,534 per acre, for the land component is unreasonable since it fails to differentiate between site support land and excess land.
20. That this difference is critical since site support land includes utilities, excess land does not.
21. That the County determined that the land component of the value of the subject property, \$851,825, or \$8,373 per acre, does account for the difference between site support land and excess land
22. That the County's Appraiser's opinion of value of \$975,190, or \$9,586 per acre, accounts for the difference between site support land and excess land.
23. That the Commission finds and concludes from all the evidence contained in the record that value of the land component of the subject property as of the assessment date was \$851,825, or \$8,373 per acre, as determined by the County.
24. That therefore the land component of value as determined by the County was neither unreasonable nor arbitrary.
25. That a Referee hired by the County was assigned to hear Taxpayer's protest regarding the Assessor's determination of the value of the subject property as of the assessment date.
26. That no one from Kawasaki Motors Corporation appeared at the hearing scheduled before the Referee on Friday, July 11, 1997 at 11:00 a.m.. (E3:2).

27. That the Referee recommended that the Assessor's determination of value be adopted by the County. (E3:34).
28. That at the hearing before the Commission, a licensed, "Certified General" appraiser testified on behalf of the Taxpayer. That at the hearing before the Commission a licensed, "Certified General" Appraiser also testified on behalf of the County.
29. That both appraisers qualify as expert witnesses, and both have extensive experience in appraising complex commercial and industrial properties.
30. That Taxpayer's Appraiser did not give much weight to the cost approach to value. (E2:46).
31. That County's Appraiser gave the most weight to the cost approach to value. (E4:78).
32. That the cost approach to value is a methodology recognized by professional appraisal organizations as an appropriate approach to value. (*Property Appraisal and Assessment Administration*, ("Property Appraisal") pp. 106 - 107. *Property Assessment Valuation*, pp. 42 - 47).
33. That the fee appraisal industry recognizes the three most commonly used appraisal approaches: cost, income and sales comparison. *Uniform Standards of Professional Appraisal Practice*, 1997, ("USPAP," Standards Rule 1-4(a) and 1-4(b)).
34. That the cost approach is "... especially useful for appraisal of properties for which sales and income data are scarce. Sales data are often difficult to obtain for special-purpose and industrial properties." (*Property Assessment*, pp. 127 - 128).
35. That an "OASIS" computer printout is a computerized record of the Assessor's Office which is used to list the characteristics of a property which is assessed by the Assessor's

Office, and which also sets forth the Assessor's information regarding all three appraisal methodologies.

36. That the "OASIS" printouts are the Property Record Cards of the Lancaster County Assessor's Office.
37. That the "OASIS" printout for the subject property shows a number of "building permits" issued to Taxpayer. That these building permits identify the newly constructed improvements which were added to the assessed value of the older improvements and the value of the land in order to determine the total value as the subject property as of the assessment date. (E3:17 - 18, 20).
38. That the real property improvements added to the tax rolls for tax year 1997 include a small metal utility building which contributes minimal value to the property as a whole and no added value for 1997; and a "partial value" based on 75% completion as of the assessment date of an addition on the north end of the warehouse building.
39. That the assessed value of the addition was based on a value of \$16.00 per square foot (sq. ft.) multiplied by 30,600 sq. ft.(size of the addition) for a total completed value of \$489,600. That 75% of that amount yields a partial value for 1997 for the warehouse addition of \$367,000 (rounded).
40. That the 75% complete value of \$367,000 for the addition to the warehouse was added to the 1996 valuation of the subject property of \$13,916,455 for a value for 1997 of \$14,283,455 as determined by the County Assessor. (E3:33).
41. That Taxpayer has purchased additional land adjacent to the subject property over the past several years and continues to do so.

42. That Taxpayer has added to the number of new structures on the subject property, and remodeling existing structures for the past several years and continues to do so.
43. That these newer structures reduce the overall effective age of the improvements, and extend the economic life of the improvements. That these factors are critical aspects of the Cost Approach methodology.
44. That Taxpayer's Appraiser utilized the Cost Approach as a support for the Sales Comparison Approach. (E2).
45. That Taxpayer's Appraiser determined the physical depreciation to be 25% and the functional obsolescence and external obsolescence were calculated together as an accrued depreciation factor of 50%. (E2:26, 32).
46. That in determining the functional and external obsolescence depreciation percentages for use in the Cost Approach, Taxpayer's Appraiser used two "comparable sales." (E2:28 - 29).
47. That both of those "comparable sales" were located in Missouri. That the first, sale #1 was approximately 25% smaller than the subject property, and sale #2 was approximately 75% larger than the subject property. (E2:27 - 28).
48. That Taxpayer's Appraiser determined depreciation attributable to functional and external obsolescence from the sale of these two "comparable properties." He determined this obsolescence factor by dividing the Replacement Cost New Less Depreciation ("RCNLD") cost per square foot by the sales price per square foot.
49. That Taxpayer's Appraiser, however, applied the resulting obsolescence factor to the Replacement Cost New ("RCN") of the subject property.

50. That Taxpayer's Appraiser therefore determined the obsolescence factor from the "comparable properties" using a methodology substantially different from the methodology used when applying the factor for the subject property. (E2:27 - 32).
51. That utilizing a different methodology for the comparable sales than that which was used for the subject property is misleading and distorts the resulting opinion of value.
52. That if the methodology used in calculating the obsolescence factor was applied in a uniform manner Taxpayer's Appraiser would have reached a dramatically different final opinion of value for the subject property.
53. That if the external obsolescence of 50% had been applied to the subject property in the same manner as on the sales properties, i. e., on the RCNLD of \$24,199,058, the resulting depreciation value would have been \$12,099,529 rather than \$16,132,706, a difference of \$4,033,177.
54. That when using Taxpayer's Appraiser's figures, calculating the final value based on using RCNLD the fair market value of the subject property would be \$13,314,233 instead of \$9,181,057, a difference of \$4,133,176. (E2:32).
55. That the lack of uniform application of a methodology to determine the functional and external obsolescence factors, or the misapplication of a methodology in determining those factors, may constitute a violation of Standards Rule 1-1 (b). (*USPAP*).
56. That County's Appraiser's Cost Approach was given the most weight in determining his opinion of the fair market value of the subject property. (E4:78).
57. That County's Appraiser determined the physical depreciation separately for each of the buildings on the subject site. That the total RCN for all improvements was \$27,958,736

and the total RCNLD was \$19,739,817, indicating a depreciation value of \$8,218,919 which calculates to a 29% depreciation factor. (E4:78).

58. That County's Appraiser determined that the subject property suffered from curable functional obsolescence caused by the insufficient size of the corridor connecting the main plant to the bonding building and the 90-foot addition to the warehouse building. That part of this curable functional obsolescence includes the fact that the addition to the warehouse building was only 75% complete as of the assessment date. That the cost to cure the total curable obsolescence was determined to be \$374,000. (E4:63).
59. That County's Appraiser determined that the subject property suffered a loss in value due to the large size of the subject property, and therefore that the pool of possible purchasers would be smaller. That therefore the time on the market could be two to three years. His opinion of the resulting external obsolescence was 10% which calculates to \$1,974,000. (E4:64.)
60. That County Appraiser's opinion of the fair market value of the subject property using the Cost Approach to value was \$18,745,000. (E4: 68).
61. That both Appraisers determined that the Income Approach would not be reliable as the subject property is an owner occupied property with no lease or rent information upon which to base an Income Approach to value opinion. (E2:21; E4:77).
62. That both Appraisers completed the sales comparison approach to value for the subject property, with widely differing opinions of value. (E2:44; E4:76).
31. That both Appraisers agreed that the size of the subject property would require an extended time on the market of two years or more; would be offered on a regional or

national market area and would draw from a limited pool of potential buyers.

63. That Taxpayer's Appraiser noted in the introduction that "the eventual sales price of the building, if it were available for sale, would be dependent on several intangible factors, including state, county and local incentives available." (E2:2).
64. That Taxpayer's Appraiser offered no evidence to indicate what "incentives," if any, are currently in effect for the subject property, and further offered no evidence of what the impact of "incentives" might be, positive or negative, on the fair market value of the subject property.
65. That the Appraisers did not agree on the ease of dividing the improvements into multiple tenant spaces. Taxpayer Appraiser's opinion is that they could not be easily divided while County Appraiser's opinion is that they could be easily divided into multiple tenant uses.
66. That both Appraisers stated that the marketability of the subject property would be improved and the required time on the market would be reduced if the improvements could be easily divided into multiple tenant properties.
67. That Taxpayer's Appraiser used sales from his sales data base for "Large Manufacturing/Warehouse comparables used for size comparison" containing 24 sales, from which he selected eight for analysis as the most comparable properties to the subject property. (E2:35).
68. That the eight sales occurred between June, 1992, and August, 1996. That Taxpayer's Appraiser stated that with this type of property the market indicated that no time adjustment was warranted.

69. That the Taxpayer Appraiser's eight comparable sales came from various states as follows: 1 from Iowa; 1 from Kansas; 1 from Texas; 1 from South Carolina; and 3 from Missouri. That although Taxpayer's Appraiser indicates that sale #2 and sale #8 are "superior" locations, and the other six are "comparable" locations, Taxpayer's Appraiser made no specific dollar amount or percentage adjustments for these differences. (E2:42).
70. That Taxpayer's Appraiser testified that he had personally inspected five of the eight properties at some time. That this testimony conflicts with his written appraisal. That appraisal indicates information from other sources was also used. That, for example, as shown under Age/Condition, "The comparable sales were analyzed based on their *reported* conditions at the time of sale and their dates of construction." (Emphasis added). (E2:40).
71. That the eight comparable properties range in size from 357,652 sq. ft. to 1,681,712 sq. ft.. That the subject property, as determined by Taxpayer's Appraiser, has an area of 961,927 sq. ft.. That Taxpayer's Appraiser made no specific dollar amount or percentage adjustments for size variations between the subject property and these "comparable properties."
72. That Taxpayer Appraiser's eight comparable properties range in price per sq. ft. from \$5.95 to \$12.63. (E2:44)
73. That Taxpayer's Appraisers' grid shows his opinion of the "comparability" of selected properties to the subject in relative terms such as "superior," "comparable" or "inferior." (E2:42 - 43).

74. That no specific dollar amount impact or percentage factor was assigned to any of the units of comparison measured by the Taxpayer's Appraiser. (E2:42).
75. That Taxpayer Appraiser's opinion of fair market value of the subject property using the Sales Comparison Approach to value is \$9.00 per sq. ft. for a total value of \$8,650,000. (E2:44)
76. That for the Sales Comparison Approach, County's Appraiser reviewed 35 commercial/ industrial regional sales which occurred between December, 1986, and August, 1996. That from these sales County's Appraiser selected five sales for analysis. (E4:86).
77. That County's Appraiser used five sales from three states: Minnesota, Iowa, and Indiana. That County's Appraiser determined that the Minnesota sales were in a superior location and required a minus 25% adjustment, and that the Iowa and Indiana sales were in a comparable location requiring no adjustment for location. (E4:69).
78. That the five comparable sales ranged in Gross Building size from 512,712 sq. ft. to 1,207,000 sq. ft.. (E4:75). That County's Appraiser determined the area of the improvements of the subject property to be 966,881 sq. ft. (E4:76).
79. That County Appraiser's comparable properties sale price per sq. ft. ranged from \$16.92 to \$27.93 prior to adjustments and from \$17.77 to \$26.68 after adjustments. (E4:75).
80. That County Appraiser's comparable sales were within three years of the effective date of the subject property appraisal and that he determined the market indicated little or no evidence of an adjustment for time.
81. That County's Appraiser also prepared a grid indicating the adjustments made to his five comparable sales. Those total adjustments range from a minus 35% to plus 40%, raising

questions as to their true comparability. (E4:75).

82. That County's Appraiser did not personally visit the comparable sale properties but acquired the factual data regarding the comparable sale properties from the marketplace, other appraisers and assessment officials.
83. That County Appraiser's opinion as to the fair market value of the subject property using the sales comparison approach to value is \$18.25 per sq. ft. which calculates to \$17,947,000.
84. That Taxpayer's Appraiser renders an opinion of value using the Cost Approach of \$9,180,000 (with concerns as to method used) and an opinion of value using the Sales Comparison Approach of \$8,650,000. (Exhibit 2, pg. 45)
85. That Taxpayer Appraiser's Reconciliation of Values found at Exhibit 2, pg. 46 results in a final opinion of fair market value of \$8,650,000 for the subject property as of January 1, 1997.
86. That County's Appraiser's Reconciliation of Value and final value are found at Exhibit 4, pg. 78. The opinion of value using the Cost Approach was \$18,745,000 and the opinion of value using the Sales Comparison Approach was \$17,947,000.
87. That County's Appraiser's final opinion of the fair market value of the subject property as of January 1, 1997, was \$18,320,000.
88. That the County did not cross-appeal or otherwise allege that the assessed value of the subject property as determined by the County was undervalued. The Commission therefore cannot raise the assessed value without violating the due process protections which must be afforded Taxpayer in this matter.

89. That the County Board of Equalization's determination of the fair market value of the subject property as of January 1, 1997, was \$14, 283,455.
90. That the opinion of value offered by Taxpayer's Appraiser is based on faulty appraisal methodology, therefore the resulting opinion has no credibility.
91. That Taxpayer has adduced no evidence to establish that the decision of the County was unreasonable or arbitrary.
92. That the Commission concludes that County's determination of value was made in accordance with professionally accepted mass appraisal methods.
93. That the Commission finds based on all of the evidence that the fair market value of the subject property as of January 1, 1997, was \$14,283,455.
94. That the assessed value of the subject property for tax year 1997 as determined by the County is therefore supported by the evidence.

II. ANALYSIS

The subject property is owned by Kawasaki Motors Corporation. It is an industrial manufacturing and distribution warehouse that has been built in several stages from 1974 through 1997. It is located south of Highway 34 and just north of Lincoln Municipal Airport. It is zoned I-2, Industrial Park District.

The Assessor's Office determined the 1997 valuation for the subject property after inspecting the property and reviewing the progress on an addition to the warehouse and a small new utility building. An employee of Kawasaki accompanied the appraiser from the Assessor's

Office during the inspection. The Kawasaki employee did not have a cost figure for the addition to the warehouse, but is quoted as saying the building permit amount of \$799,570 would be in line. (E3:20). The determination was that the small utility building contributed little or no additional value to the property. Based on the inspection and the information obtained from Kawasaki, it was determined that the 30,600 sq. ft. addition to the north end of the warehouse was 75% complete as of the assessment date. The value of that addition was determined based on the Assessor's determination of a value of \$16.00 per sq. ft. for the addition for a partial value as of the assessment date of \$367,000. There were no other differences noted in the 1997 assessment. In particular, there were no changes made in the acre description, the amount of land, or in the land value. No changes were made in the improvement value for any of the other improvements. The assessed value of the subject property in tax year 1996 was \$13,916,455. The 1997 assessed value, which included the new warehouse addition (75% complete, valued at \$367,000), for the subject property was determined to be \$14,283,455.

Neb. Rev. Stat. §77-1511 requires that the Commission "shall affirm the action taken by the board unless evidence is adduced establishing that the action of the board was unreasonable or arbitrary or unless evidence is adduced establishing that the property of the appellant is assessed too low." The burden of establishing that the valuation set by the County was arbitrary or unreasonable is upon the Taxpayer.

Taxpayer offered a Fee Appraisal as evidence that the decision of the County was unreasonable and arbitrary. The County also offered a Fee Appraisal in order to demonstrate that its decision was neither unreasonable and nor arbitrary. Both appraisals were completed by qualified, professionally licensed Nebraska Certified General Appraisers. Both appraisers have

had extensive experience in the valuation of complex commercial and industrial properties.

Neb. Rev. Stat. §77-112 (1997 Supp.) defines actual value, and also establishes that any of the three professionally accepted mass appraisal methods (i. e., the Cost Approach, the Sales Comparison Approach, or the Income Approach) may be utilized in order to determine "actual value." The statutes, do not, however, define "mass appraisal methods." *Property Assessment Valuation*, Second Edition, p. 285, distinguishes mass appraisal methods from individualized "fee" appraisals. "Mass appraisal is the systematic appraisal of groups of properties as of a given date using standardized procedures and statistical testing. Single-property appraisal, or "fee" appraisal, in contrast, is the valuation of a particular property as of a given date."

Although some difference in methodology is allowed between mass and fee appraisal, both types of appraisals are required to achieve an opinion of fair market value as of a particular date. [The assessment date, in this appeal, is January 1, 1997. Neb. Rev. Stat. §77-1301 (Reissue 1996)]. Both types of appraisals must use a systematic, documented, recognized appraisal approach to arrive at the final value. *USPAP*, Standards Rule 1-4. Neb. Rev. Stat. §77-112 (1997 Supp.).

The goal of both types of appraisals is to estimate "market value." Neither mass appraisal methodology nor fee appraisal methodology is an exact science. No two appraisers, in fact, will probably ever have exactly the same opinion of value. Some difference of opinion is therefore reasonable and to be expected. However in this appeal, the final opinions of two "fee" Appraisal Reports differ by almost \$10,000,000. (Taxpayer's Appraiser's opinion of value is \$8,650,000. County's Appraiser's opinion of value is \$18,320,000.) The magnitude of the difference of opinion between the two experts is so wide as to require close inspection of the bases of the opinions.

The first significant item of difference between the two opinions involves the legal description of the subject property. Kawasaki is a large and expanding industrial property. Kawasaki has purchased additional land adjacent to its property. Those purchases increased the land area from 101.73 acres to 227.73 acres. The information provided to the Taxpayer was that found on the Property Record Card, which in this case is the "OASIS" printout. That Property Record Card lists a legal description with an acre count of 101.73 acres. The Taxpayer, based on the information included in the Property Record Card, believed that its appeal included 101.73 acres of land, and all of the improvements. The Referee and the County Board of Equalization also took this position. In fact, it was not until the County prepared for the hearing on the merits of the appeal that the problem with the legal description was identified. The problem appears to have been identified by the County's Appraiser. His estimate of land value included the additional 126 acres. After further discussion and research of the maps provided in the exhibits, it appears that a significant portion of the "bonding building" is located on Lot 22. That lot is not included in the legal description of the subject property record card. Again, however, the Assessor, the Taxpayer, the County, and Taxpayer's Appraiser all acted on the presumption that the "bonding building" was included in the legal description, and was therefore part of the improvements which were the subject of this appeal. The Commission finds and concludes, therefore, that for the purposes of this hearing the subject property includes 101.73 acres of land, and the entire "bonding building."

Taxpayer's Appraiser made a "fee appraisal" of the subject property. Taxpayer's Appraiser utilized the Cost Approach to value and the Sales Comparison Approach. He determined that the Income approach to value was not appropriate for the subject property

because it is owner operated and no rental or lease information is available. He placed the most weight on the Sales Comparison approach to value.

The starting point for the analysis of Taxpayer's opinion of value is the proper application of the Cost Approach methodology. The methodology required for proper application of the Cost Approach are summarized both in Exhibits 2 and 4. One critical step in the methodology is the determination of the "accrued depreciation attributable to physical deterioration, functional obsolescence, and external (economic) obsolescence." *Property Assessment*, p. 128. Determination of this accrued depreciation must be made using "standardized procedures," in mass appraisal practices. *Property Assessment*, p. 285. Fee appraisal standards also require that the appraiser "... be aware of, understand, and *correctly employ* those recognized methods and techniques that are necessary to produce a credible appraisal." *USPAP*, Standards Rule 1-1.

Taxpayer's Appraiser, in his Cost Approach methodology, determined that the external obsolescence factor for the subject property is 50%. Taxpayer's appraisal shows that two sales were used to establish the functional obsolescence and external obsolescence. (E2:28 - 29). Exhibit 2, pg. 32 is the cost approach to value for the subject property. The following indicates how the application of the factors derived from the Replacement Cost New ("RCN") and those same factors derived from the Replacement Cost New Less Depreciation ("RCNLD") affect the final opinion. From Exhibit 2:

	Pg.28 Sale #1	Pg. 29 Sale #2	Pg. 32 Subject Property
Adj cost per S.F.. (RCN)	\$28.11	\$27.24	No overall \$ per S.F.
After Dep. Per S.F. (RCNLD)	\$18.98	\$14.20	
Actual Sale Price	\$10.03	\$ 5.95	
Percent calculated on RCNLD	47%	58%	
Sale #1		Sale #2	
\$10.03 divided by \$18.98		\$5.95 divided by \$14.20	
=53% 100% minus 53% = 47%		= 42%100% minus 42% = 58%	
Appraiser chose 50% depreciation factor based on RCNLD			Subject Property RCN \$32,265,411 Multiplied by 50%= \$16,132,706 RCNLD \$24,199,058 Multiplied by 50%= \$12,099,529

Applying the 50% functional and external obsolescence factor against the RCNLD for the subject property, in the same way as it was for the two sales used to determine that percentage, would yield a final value of \$13,314,233. Calculated as: (See Exhibit 2, pg. 32)

\$24,199,058	(after physical depreciation)
\$12,099,529	(Less 50% functional & external obsolescence)
\$ 450,000	(Plus depreciated value of Site improvements)
<u>\$ 664,704</u>	<u>(Plus estimated Site value)</u>
\$13,314,233	Total valuation when all depreciation uniformly applied.

Using the RCN for Sale #1 the calculation would be \$10.03 sales price divided by \$28.11 =35.68%; 100% minus 36%=64%.

Using the RCN for Sale #2 the calculation would be \$5.95 sales price divided by \$27.24 = 21.84%; 100% minus 22% =78%.

If calculated on the RCN using the same mathematical methodology, the percentage factors would be much different making the resultant valuation much lower. Using RCN (E32:2)

This flawed methodology in Taxpayer's cost approach supports *an* opinion of value. However that opinion is excessively low and, based on all the facts and circumstances, lacks credibility.

Taxpayer's sales comparison approach to value likewise lacks credibility. The "comparable properties" chosen by both appraisers were much smaller or much larger in size, were located in different states with differing factors affecting the market place. The adjustments Taxpayer's Appraiser made were limited to narrative ratings of "Superior" "Comparable" and "Inferior" for all eight sales with no further conclusion as to how those ratings impact the final valuation as a comparable to the subject property. Taxpayer's Appraiser testified that his adjustments were made using the "qualitative" method of adjustment and cited *The Appraisal of Real Estate* 11th Edition. While this "qualitative" approach may be proper, it is clearly not the preferred methodology. *Property Appraisal*, p. 164, states in pertinent part: "Quantitative attributes are usually additive and can easily be expressed as dollar amounts; qualitative attributes are usually expressed as percentages and can be either additive or multiplicative." Pages 160 thru 172 discuss adjustments in great detail. All adjustment conclusions are enumerated in either a dollar amount or a percentage amount reaching a final dollar amount of adjustment necessary to be compared to the subject properties. The goal of an appraisal is the expression of an opinion of value in terms of cash based on professionally accepted methodology. Taxpayer's Appraiser used a "qualitative" approach. Since this

approach does not utilize specific dollar amount or percentage adjustments, the methodology used does not assist the Commission in determining a controverted fact in issue, and is of no probative value. *See, e. g., Crafton v. Union Pacific R. R.*, 7 Neb. App. 793 (1998).

County's appraisal has similar issues in its sales comparison approach. County's Appraiser used five sales and had adjustments ranging from minus 35% to plus 40%, for a total variance of 75%. That great a variance begs the question of "comparability."

It is a critical factor in this appeal that the improvements which comprise the Kawasaki Plant have been built over a period of time commencing in 1974. Some discussion of the impact of that circumstance on the valuation is found at Exhibit 3, pg. 19. Taxpayer has, from this uncontroverted evidence, built or improved existing structures in 1974, 1975, 1979, 1984, 1986, 1991, 1992, 1993, 1994, 1995, 1996, and 1997. (E4:14 - 15). Taxpayer has also continued to expand by purchasing additional land, most recently in 1994. This constant process of expansion and improvement must be of benefit to Taxpayer. This process also enhances the value of the property, while at the same time making it very difficult to find comparable properties. Even County's "comparable" properties for which adjustments have been made cannot be accorded any weight given the magnitude of the adjustments which are required in order to make those properties "comparable" to the subject property. The Commission must conclude from this record that the sales comparison approach cannot be relied upon as a valuation methodology which yields a valid estimate of market value for the subject property.

The fact that neither appraiser could adequately support the comparability of the sales of properties offered as "comparable properties" also supports the County's contention that the valuation of the subject property is best determined using the cost approach. This contention is

also supported by standard reference works.

“The cost approach usually works best for newer improvements, because construction costs are easier to estimate and there is less depreciation. This approach is especially useful for appraisal of properties for which sales and income data are scarce. Such data are often difficult to obtain for special-purpose and industrial properties. Even when values from the other approaches are used for assessments, calculation of cost values is recommended as a check and support.”

Property Assessment, p. 127.

County's Appraiser gave the most weight to the cost approach. Using the cost approach, the physical depreciation is estimated to be \$8,218,919 (approximately 29%); curable functional obsolescence is estimated to be \$374,000 (approximately 2%); and external obsolescence calculates is estimated to be \$1,974,000 (approximately 10%). Aside from the mathematical inconsistencies with Taxpayer Appraiser's functional and external obsolescence depreciation, the physical depreciation is similar at 25% to County 29%. Taxpayer's Appraiser combined the functional and external obsolescence into 50% while County's Appraiser attributed a little less than 2% curable functional obsolescence and 10% external obsolescence.

The external obsolescence difference between 50% and 12% is the major difference between the two appraisal reports. External obsolescence for the subject property is defined by County Appraiser in Exhibit 4, pg 64 and by Taxpayer Appraiser in Exhibit 2, pg. 30. Both definitions highlight the subjective nature of determining the degree of external obsolescence.

Much of the determination is based on predicting very subjective future events in areas such as economics, incentives, work force, and investment desirability. Because of the inconsistency in application of the 50% obsolescence factor by Taxpayer's Appraiser, the resulting opinion of value of \$9,180,000 is not credible in light of all of the facts and circumstances.

County's Appraiser's final opinion of value for the subject property as of January 1, 1997, was \$18,320,000. This opinion is, of course, substantially above the value as determined by the County (\$14,283,455). This opinion is supported by an appraisal which, from the record before the Commission, fully complies with *Uniform Standards of Professional Appraisal Practice*, 1997.

The fact that the appraised value is far in excess of the value as determined by the County begs the question why the Commission should not increase the assessed value of the subject property as provided in Neb. Rev. Stat. §77-1511 (1997 Supp.). The reason is clear: the County has not previously alleged that the County's original noticed valuation was too low. The Commission, under such circumstances in other cases, has determined that due process requires the Taxpayer be placed on notice prior to the hearing of any request to increase the assessed value. Since no such notice was given, the Commission cannot increase the assessed value over that determined by the County.

The Commission, from the record before it, finds that the Taxpayer has not met its burden of proof to show that the County was arbitrary or unreasonable in determining that the assessed value of the subject property was \$14,283,455 as of January 1, 1997.

III. JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (1997 Supp.).

IV. STANDARD OF REVIEW

The Commission must affirm the decision of the county board of equalization unless the appellant demonstrates by a preponderance of the evidence that the decision made by the county board of equalization was not governed by reason, or was made in disregard of the facts or circumstances and without some basis which would lead a reasonable person to the same conclusion. *J. C. Penney Co. v. Lancaster Cty. Bd. Of Equal.*, 6 Neb. App. 838, 578 N. W. 2d 465 (1998) *Title 442, Nebraska Administrative Code, Chapter 5, Section 018*. Once the presumption has been overcome, the Commission must consider the reasonableness of the value fixed by the Board based on all of the evidence. *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).

V. CONCLUSIONS OF LAW

First, from the record before it, the Commission concludes as a matter of law that it has jurisdiction over both the parties and the subject matter of this appeal. The Commission further concludes as a matter of law that, pursuant to *Title 442, Nebraska Administrative Code*, the Appellant is required to establish by a preponderance of the evidence that the decision of the Lancaster County Board of Equalization was unreasonable or arbitrary.

The Nebraska Court of Appeals has held that there is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board. *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).

The Commission, in this appeal, finds as a matter of law that the evidence adduced by the Taxpayer has failed to overcome the statutory presumption set forth in Neb. Rev. Stat. §77-1510 (1997 Supp.). The Commission also finds and determines as a matter of law that the assessed value as fixed by the County was reasonable based on all of the evidence before the Commission.

Finally, the Commission must, for the reasons set forth above, and pursuant to Neb. Rev. Stat. §77-1510 (1997 Supp.), hereby does conclude as a matter of law that from the record before the Commission the Taxpayer has not met its burden of proof, and therefore the action of the Lancaster County Board of Equalization should be affirmed.

VI. ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Lancaster County Board of Equalization which denied

Taxpayers' protest is affirmed.

2. That Taxpayer's Industrial real property known as Lots 21 & 23 SW and Lots 3 & 18 SW, Section 33, Township 11 north, Range 6 east, Lancaster County, Nebraska, more commonly known as 6600 NW 27th Street, shall be valued as follows for tax year 1997:

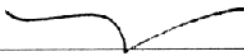
Land	\$ 851,825
Improvements	\$13,431,630
Total	\$14,283,455

3. That this decision, if no appeal is filed, shall be certified within thirty days to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That this decision shall only be applicable to tax year 1997.
5. That each party is to bear its own costs in this matter.

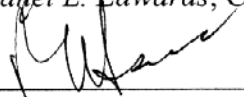
IT IS SO ORDERED.

Dated this 13th day of November, 1998.




Mark P. Reynolds, Chairman


Janet L. Edwards, Commissioner


Robert L. Hans, Commissioner